IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 23353 of 2007(E)

LAR.64/2000 of ADDL.SUB COURT,KOLLAM

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PETITIONERS:

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1. ENOCK,
   KAVINTE VADAKKETHIL, KAREEPUZHA CHERRI,
   THRIKKADAVOOR VILLAGE, KOLLAM.

2. MARY,
   KAVINTE VADAKKETHIL, KAREEPUZHA CHERRI,
   THRIKKADAVOOR VILLAGE, KOLLAM.

BY ADV. SRI.JOHN BRITTO
SRI.C.A.RAJEEV

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR, KOLLAM.

BY G.P. SHRI L.G.SURESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF JUDGMENT DATED 21.2.2002 OF THE ADDL.SUB COURT, KOLLAM IN LAR 64/00

EXT.P2 TRUE COPY OF AWARD -DO- -DO-

EXT.P3 TRUE COPY OF ORDER DATED 9.9.05 IN IA NO.1053/05 IN LAR 64/00 OF THE ADDL.SUBCOURT, KOLLAM

EXT.P4 TRUE COPY OF ORDER DATED 22.9.05 IN IA NO.1054/05 IN LAR 64/00 OF THE ADDL.SUB COURT, KOLLAM

EXT.P5 TRUE COPY OF IA 2202/05 DATED 30.9.05 FILED IN LAR 64/00 OF ADDL. SUB COURT, KOLLAM

EXT.P6 TRUE COPY OF ORDER DATED 23.12.05 IN IA 2202/05 IN LAR 64/00 OF ADDL. SUB COURT, KOLLAM

//TRUE COPY//

K.PADMANABHAN NAIR, J.

W.P.(C) No. 23353 OF 2007

Dated this the 31st July, 2007.

J U D G M E N T

Admitted. The writ petition itself is heard and disposed of.

2. Properties belonging to the petitioners were acquired for a public purpose. Dissatisfied with the quantum of compensation awarded, they have filed an application under Section 18 of the Land Acquisition Act, claiming enhancement. The matter was referred to the Subordinate Judge's Court, Kollam, and numbered as L.A.R.No.64/2000. The case was posted for trial on 21.2.2002. On that date, petitioners were absent. The learned Subordinate Judge, after taking note of that fact, found that the compensation awarded by the Land Acquisition Officer is just and proper, and closed the petition.

3. Petitioners filed I.A.Nos.1053/2005 and 1054/2005. I.A.No.1053/2005 was filed for condoning the delay in filing the application. I.A.No.1054/2005 was filed for reviewing of the order

passed in the L.A.R. Both these applications were dismissed on 22.9.2005 for non-prosecution. Petitioners have also filed another application, I.A.No.2202/05 for restoring those applications back to files. That application was also dismissed on 23.12.2005 by the learned Subordinate Judge. Challenging those orders, this writ petition is filed.

4. It is true that there were laches on the part of the petitioners. In the writ petition, it is averred that the petitioners could not attend the court on the date on which the case was posted for trial, due to reasons beyond their control. It is submitted that the petitioners belong to the fisherman community, and in fact the property acquired was originally given as a security to the Matsyafed, and subsequently it was released. It is submitted that on account of their avocation, they could not go to the office of the counsel and instruct them. That is the reason why all these petitions were dismissed.

5. Though the reasons stated are not very much convincing, considering the facts and circumstances, I am of the view that it is just and proper to give one more opportunity to the petitioners to establish that they are entitled to get additional compensation. But on account of the lapse on the part of the petitioners, they are not entitled to get interest on the enhanced compensation awarded, if any, from 21.2.2002 till today. They are entitled to get interest prior to 21.2.2002 and after the date of this order.

6. In the result, this writ petition is allowed. Orders passed by the learned Subordinate Judge dismissing I.A.No.2202/2005 is hereby set aside. I.A.No.2202/2005 is allowed. I.A.Nos.1053 & 1054/2005 are restored to the file and orders passed by the Trial Court dismissing those applications are also set aside. Those applications are also allowed. The judgment passed by the learned Additional Subordinate Judge, Kollam, on 21.2.2002, in L.A.R.No.64/2000, is hereby set aside. The learned Subordinate Judge

is directed to take L.A.R. back to file, and dispose of the same afresh, in accordance with law, after giving a reasonable opportunity to the petitioners to adduce evidence.

However I make it clear that petitioners are not entitled to get interest from 21.2.2002 till the date of this order. They are entitled to get interest till 21.2.2002 and from today.

K.PADMANABHAN NAIR,
JUDGE

nj.